

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

IN THE MATTER OF:)	Docket No. CAA-05- 2004 0042
)	
Aluminum Recovery)	Proceeding to Assess a
Technologies, Inc.)	Civil Penalty under
Kendallville, Indiana,)	Section 113(d) of the
)	Clean Air Act,
Respondent.)	42 U.S.C. § 7413(d)
)	

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Administrative Complaint

1. This is an administrative proceeding to assess a civil penalty under Section 113(d) of the Clean Air Act (the Act), 42 U.S.C. § 7413(d).

2. The Complainant is, by lawful delegation, the Director of the Air and Radiation Division, United States Environmental Protection Agency (U.S. EPA), Region 5, Chicago, Illinois.

3. The Respondent is Aluminum Recovery Technologies, Inc. (Respondent or ART), a corporation doing business in Indiana.

Statutory and Regulatory Background

4. Under Section 112(d) of the Act, the Administrator of U.S. EPA promulgated the National Emission Standards for Hazardous Air Pollutants for Secondary Aluminum Production at 40 C.F.R. §§ 63.1500 et seq. (Secondary Aluminum Production NESHAP or Subpart RRR).

5. The Secondary Aluminum Production NESHAP applies to the owner or operator of each secondary aluminum production facility.

6. "Affected source" is defined at 40 C.F.R. § 63.2 as "the collection of equipment, activities, or both within a single

contiguous area and under common control that is included in a section 112(c) source category or subcategory for which a section 112(d) standard or other relevant standard is established pursuant to section 112 of the Act. Each relevant standard will define the "affected source," as defined in this paragraph unless a different definition is warranted...."

7. The Secondary Aluminum Production NESHAP states at 40 C.F.R. § 63.1500(b)(2) that "[t]he requirements of this subpart apply to the following affected sources, located at a secondary aluminum production facility that is a major source of hazardous air pollutants (HAPs) as defined in § 63.2: ... (2) Each new and existing thermal chip dryer;"

8. "Secondary aluminum production facility" is defined at 40 C.F.R. § 63.1503 as "any establishment using clean charge, aluminum scrap, or dross from aluminum production, as the raw material and performing one or more of the following processes: scrap shredding, scrap drying/delacquering/decoating, thermal chip drying, furnace operations (i.e. melting, holding, sweating, refining, fluxing, or alloying), recovery of aluminum from dross, in-line fluxing, or dross cooling."

9. "Major source" is defined at 40 C.F.R. § 63.2 as "any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit considering controls, in the aggregate, 10 tons per year or more of any hazardous air pollutant or 25 tons per year or more of any combination of hazardous air pollutants...."

10. "Existing source" is defined at 40 C.F.R. § 63.2 as

"any affected source that is not a new source."

11. "New source" is defined at 40 C.F.R. § 63.2 as "any affected source the construction or reconstruction of which is commenced after the Administrator first proposes a relevant emission standard under this part...."

12. The Secondary Aluminum Production NESHAP, at 40 C.F.R. § 63.1501(a), requires that the owner or operator of an existing affected source comply with the requirements of Subpart RRR by March 24, 2003.

13. "Hazardous air pollutant" is defined at 40 C.F.R. § 63.2 as "any air pollutant listed in or pursuant to section 112(b) of the Act."

14. Hydrochloric acid, dibenzofurans, and 2,3,7,8-tetrachlorodibenzo-p-dioxin are listed as hazardous air pollutants in Section 112(b) of the Act, 42 U.S.C. 7412(b).

15. "Thermal chip dryer" is defined at 40 C.F.R. § 63.1503 as "a device that uses heat to evaporate oil or oil/water mixtures from unpainted/uncoated aluminum chips."

16. The Secondary Aluminum NESHAP, at 40 C.F.R. § 63.1505(c)(2), requires that on and after the compliance date established by 40 C.F.R. § 63.1501, the owner or operator of a thermal chip dryer must not discharge or cause to be discharged to the atmosphere emissions in excess of 2.50 micrograms of dioxins and furans (D/F) per Mg of feed/charge.

17. "Dioxins and furans" and "D/F" are defined at 40 C.F.R. § 63.1503 as "tetra-, penta-, hexa- and octachlorinated dibenzo dioxins and furans."

18. The Administrator of U.S. EPA (the Administrator) may assess a civil penalty of up to \$27,500 per day of violation up to a total of \$220,000 for emission violations that occurred between January 31, 1997 and March 15, 2004, and up to \$32,500 per day of violation up to a total of \$270,000 for emission violations that occurred March 15, 2004, and later, under Section 113(d)(1) of the Act, 42 U.S.C. § 7413(d)(1), and 40 C.F.R. Part 19, as amended by 69 Fed. Reg. 7121 (Feb. 13, 2004).

19. Section 113(d)(1) limits the Administrator's authority to matters where the first alleged date of violation occurred no more than 12 months prior to initiation of the administrative action, except where the Administrator and Attorney General of the United States jointly determine that a matter involving a longer period of violation is appropriate for an administrative penalty action.

20. The Administrator and the Attorney General of the United States, each through their respective delegates, have determined jointly that an administrative penalty action is appropriate for the period of violations alleged in this complaint.

General Allegations

21. ART owns and operates a secondary aluminum facility at 2170 Production Road, Kendallville, Indiana (the facility).

22. The facility is an establishment that uses clean charge, aluminum scrap, and/or dross from aluminum production, as raw material and performs thermal chip drying, furnace operations, and/or recovery of aluminum from dross.

23. The facility is a "secondary aluminum production facility" as that term is defined at 40 C.F.R. § 63.1503.

24. Hydrochloric acid, dibenzofurans, and 2,3,7,8-tetrachlorodibenzo-p-dioxin are emitted from the facility.

25. The facility emits or has the potential to emit considering controls, in the aggregate, 10 tons per year or more of a hazardous air pollutant or 25 tons per year or more of a combination of hazardous air pollutants.

26. The facility is a "major source" as that term is defined at 40 C.F.R. § 63.2.

27. The facility is subject to the requirements of 40 C.F.R. Part 63, Subpart RRR.

28. At the facility, ART owns and operates a natural gas fired chip dryer which was constructed before February 11, 1999, and is known as thermal chip dryer #1.

29. ART's chip dryer #1 uses heat to evaporate oil or oil/water mixtures from unpainted/uncoated aluminum chips.

30. ART's chip dryer #1 is a "thermal chip dryer" as that term is defined at 40 C.F.R. § 63.1503.

31. ART's chip dryer #1 is an "existing source" as that term is defined at 40 C.F.R. § 63.2.

32. ART's chip dryer #1 is an "affected source" as that term is defined at 40 C.F.R. § 63.2.

33. On April 2-3, 2003, ART conducted performance emission testing for D/F on its thermal chip dryer #1.

Count I

34. Complainant incorporates paragraphs 1 through 33 of

this complaint, as if set forth in this paragraph.

35. On April 2-3, 2003, ART's thermal chip dryer #1 emitted an average of 44.64 micrograms of D/F per megagram (Mg) of feed/charge.

36. On April 2-3, 2003, emissions from the thermal chip dryer at the facility were in excess of the 2.50 micrograms of D/F per Mg of feed/charge limit set forth in 40 C.F.R. § 63.1505(c)(2).

37. On November 20, 2003, ART conducted performance emission testing for D/F on its thermal chip dryer #1.

38. On November 20, 2003, emissions from the thermal chip dryer #1 at the facility were below the 2.50 micrograms of D/F per Mg of feed/charge limit set forth in 40 C.F.R. § 63.1505(c)(2).

39. From March 23, 2003, until November 20, 2003, ART has been in violation of the requirements of 40 C.F.R. Part 63, Subpart RRR, and Section 112 of the Act, 42 U.S.C. 7412.

Proposed Civil Penalty

40. The Administrator must consider the factors specified in Section 113(e) of the Act when assessing an administrative penalty under Section 113(d). 42 U.S.C. § 7413(e).

41. Based upon an evaluation of the facts alleged in this complaint and the factors in Section 113(e) of the Act, Complainant proposes that the Administrator assess a civil penalty against Respondent of \$150,000. Complainant evaluated the facts and circumstances of this case with specific reference to U.S. EPA's Clean Air Act Stationary Source Penalty Policy

dated October 25, 1991 (penalty policy). Enclosed with this complaint is a copy of the penalty policy.

42. Complainant developed the proposed penalty based on the best information available to Complainant at this time. Complainant may adjust the proposed penalty if the Respondent establishes bona fide issues of ability to pay or other defenses relevant to the penalty's appropriateness.

Rules Governing This Proceeding

43. The "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits" (the Consolidated Rules) at 40 C.F.R. Part 22 govern this proceeding to assess a civil penalty. Enclosed with the complaint served on Respondent is a copy of the Consolidated Rules.

Filing and Service of Documents

44. Respondent must file with the Regional Hearing Clerk the original and one copy of each document Respondent intends to be part of the record in this proceeding. The Regional Hearing Clerk's address is:

Regional Hearing Clerk (R-19J)
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

45. Respondent must serve a copy of each document filed in this proceeding on each party pursuant to Section 22.5 of the Consolidated Rules. Complainant has authorized Mony Chabria, Associate Regional Counsel, to receive any answer and subsequent legal documents that Respondent serves in this proceeding. You

may telephone Mr. Chabria at (312) 886-6842. Mr. Chabria's address is:

Mony Chabria (C-14J)
Associate Regional Counsel
Office of Regional Counsel
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

Penalty Payment

46. Respondent may resolve this proceeding at any time by paying the proposed penalty by certified or cashier's check payable to "Treasurer, the United States of America", and by delivering the check to:

U.S. Environmental Protection Agency
Region 5
P.O. Box 70753
Chicago, Illinois 60673

Respondent must include the case name and docket number on the check and in the letter transmitting the check. Respondent simultaneously must send copies of the check and transmittal letter to Mony Chabria and to:

Attn: Compliance Tracker, (AE-17J)
Air Enforcement and Compliance Assurance Branch
Air and Radiation Division
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

Opportunity to Request a Hearing

47. The Administrator must provide an opportunity to request a hearing to any person against whom the Administrator proposes to assess a penalty under Section 113(d)(2) of the Act, 42 U.S.C. § 7413(d)(2). Respondent has the right to request a hearing on any material fact alleged in the complaint, or on the appropriateness of the proposed penalty, or both. To request a

hearing, Respondent must specifically make the request in its answer, as discussed in paragraphs 48 through 53 below.

Answer

48. Respondent must file a written answer to this complaint if Respondent contests any material fact of the complaint; contends that the proposed penalty is inappropriate; or contends that it is entitled to judgment as a matter of law. To file an answer, Respondent must file the original written answer and one copy with the Regional Hearing Clerk at the address specified in paragraph 44, above, and must serve copies of the written answer on the other parties.

49. If Respondent chooses to file a written answer to the complaint, it must do so within 30 calendar days after receiving the complaint. In counting the 30-day time period, the date of receipt is not counted, but Saturdays, Sundays, and federal legal holidays are counted. If the 30-day time period expires on a Saturday, Sunday, or federal legal holiday, the time period extends to the next business day.

50. Respondent's written answer must clearly and directly admit, deny, or explain each of the factual allegations in the complaint; or must state clearly that Respondent has no knowledge of a particular factual allegation. Where Respondent states that it has no knowledge of a particular factual allegation, the allegation is deemed denied.

51. Respondent's failure to admit, deny, or explain any material factual allegation in the complaint constitutes an admission of the allegation.

52. Respondent's answer must also state:

- a. the circumstances or arguments which Respondent alleges constitute grounds of defense;
- b. the facts that Respondent disputes;
- c. the basis for opposing the proposed penalty; and
- d. whether Respondent requests a hearing as discussed in paragraph 47 above.

53. If Respondent does not file a written answer within 30 calendar days after receiving this complaint the Presiding Officer may issue a default order, after motion, under Section 22.17 of the Consolidated Rules. Default by Respondent constitutes an admission of all factual allegations in the complaint and a waiver of the right to contest the factual allegations. Respondent must pay any penalty assessed in a default order without further proceedings 30 days after the order becomes the final order of the Administrator of U.S. EPA under Section 22.27(c) of the Consolidated Rules.

Settlement Conference

54. Whether or not Respondent requests a hearing, Respondent may request an informal settlement conference to discuss the facts of this proceeding and to arrive at a settlement. To request an informal settlement conference, Respondent may contact Mony Chabria at the address or phone number specified in paragraph 45, above.


55. Respondent's request for an informal settlement conference does not extend the 30 calendar day period for filing a written answer to this complaint. Respondent may pursue simultaneously the informal settlement conference and the

adjudicatory hearing process. U.S. EPA encourages all parties facing civil penalties to pursue settlement through an informal conference. U.S. EPA, however, will not reduce the penalty simply because the parties hold an informal settlement conference.

Continuing Obligation to Comply

56. Neither the assessment nor payment of a civil penalty will affect Respondent's continuing obligation to comply with the Act and any other applicable federal, state, or local law.

9/24/2004
Date



Stephen Rothblatt, Director
Air and Radiation Division
U.S. Environmental Protection
Agency, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

In the Matter of Aluminum Recovery Technologies, Inc.
Docket No.

~~CAA-05-~~ 2004 0042

CERTIFICATE OF SERVICE

I, Betty Williams, certify that I hand delivered the original and one copy of the Administrative Complaint, docket number ~~CAA-05-~~ 2004 0042 to the Regional Hearing Clerk, Region 5, United States Environmental Protection Agency, and that I mailed correct copies of the Administrative Complaint, copies of the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders and the Revocation, Termination or Suspension of Permits" at 40 C.F.R. Part 22, and copies of the penalty policy described in the Administrative Complaint by first-class, postage prepaid, certified mail, return receipt requested, to the Respondent and Respondent's Counsel by placing them in the custody of the United States Postal Service addressed as follows:

Gilbert Spilman, President
Aluminum Recovery Technologies, Inc.
2170 Production Road
Kendallville, Indiana 46755

Anthony C. Sullivan
Barnes & Thornburg
11 South Meridian Street
Indianapolis, Indiana 46204-3535

on the 24th day of September, 2004.



Betty Williams, Secretary
AECAS IL/IN

CERTIFIED MAIL RECEIPT NUMBER: 70010320000589098268
70010320000602953260 - Anthony Sullivan

